IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 5048 of 1997

Between:

DEPUTY EXECUTIVE ENGINEER,
G.E.SUB-DIVISION NO -2 , HIRAMANDALAM,
SRIKAKULAM DISTRICT.

..... PETITIONER

AND

1 KALIVARAPU SURYANARAYANA, S/O. APPALASWAMY,
SUBALIA COLONY, HIRAMANADALAM,
SRIKAKULAM DISTRIC.
2 CHAIRMAN & PRESIDING OFFICER OF THE HONOURBLE INDUSTRIAL

TRIBUNAL CUM LABOUR COURT,
VISAKHAPATNAM.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue as appropriate writ, order or direction more particularly one in the nature or writ of certiorari calling for the records pertaining to I.D.No. 60/91 dt. 25-9-96 on the file of the 2nd respondent and quash the same as the same is illegal and opposed to the I.D.Act.

Counsel for the Petitioner: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for the Respondent No.1: MR.KOLLURU JAGANNADHA RAO.

Counsel for the Respondent No.2: None appeared.

The Court made the following :

O R D E R:

This Writ Petition is filed by the Management aggrieved by the Award passed by the Labour Court in I.D.No. 60 of 1991, dated 25.9.1996.

2. According to the 1st respondent-workman, he was appointed as watchman on NMR basis during the period from 1975 and 1980 and thereafter he was retrenched without passing any orders. It is also stated that the petitioner authorities used to obtain thumb-impression in the register at the time of paying salary. As the workman was retrenched without issuing any orders and without following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the matter came up before the Industrial Tribunal-cum-Labour Court, Visakahapatnam, as per the reference made by the Deputy Commissioner of Labour under Sec.10(1)(c) of the Act. Before the Tribunal, the workman was examined as WW-1, and got marked Ex.W-1, Conciliation Report, dated 5.10.1990 on his behalf. On behalf of the Management, though MW-1 was examined, but no documentary evidence was marked.

The Labour Court, after considering the evidence on record and relying upon the evidence of MW-1, who deposed that he is in custody of the records showing the period for which the workman had worked under the management, but did not produce the same in the Court and got them marked on behalf of the Management, took adverse inference and held that the workman had worked for more than one year continuously and dispensing the services of the workman contravenes the provisions of Sec.25F of the Act, and therefore, the retrenchment is illegal and consequently ordered reinstatement of the workman without back wages and continuity of service. Aggrieved by the said award, the management has come up with the present Writ Petition.

3. The learned Government Pleader for Irrigation contended that the workman had worked only for a period of three months i.e., for a total working days of 86. Therefore, the workman is not entitled to the benefit of the provisions of the Act. It is also contended by the learned Government Pleader that the respondent workman did not produce any record showing that he had worked for the period alleged to have been worked during 1975 to 1980. In the absence of any evidence produced by the workman showing that he had worked for more than one year continuously, the Labour Court was not justified in granting the relief of reinstatement, though

without back wages. The learned counsel also contended that the unit in which the workman claimed to have employed is established in the year 1977, which was continued for a period of one year. Therefore, the claim of the workman is contrary to the factual position. Hence, sought for setting aside the Award passed by the Tribunal. The learned Government Pleader also claimed that some record of evidence was filed in this Court, and the same may be looked into in support of the case of the Management. The learned counsel also contended that the workman did not produce any evidence showing that he has worked for any period more than 86 days or continued for a period of 240 days in a year so as to comply the provisions of the Act.

4. The learned counsel for the workman supported the order of the Tribunal. The learned counsel contended that the Management did not comply the provisions of Sec.17-B of the Act and, therefore, sought to sustain the order passed by the Tribunal.

5. Heard the learned Government Pleader for the petitioner and the learned counsel for the respondent-workman, and considered the material on record.

6. The respondent workman approached the Tribunal on a reference by the Deputy Commissioner of Labour, under Sec.10(i)(c) of the Act. The said issue was taken up for enquiry. During the course of enquiry, the respondent workman deposed that he worked for more than one year continuously between 1975 to 1980, but without passing any orders his services were terminated without even complying the provisions of the Act. The stand of the Management is that the workman had worked only 86 days within a period of three months, and therefore, he is not entitled for any benefit of the provisions of the Act. During the course of evidence, the Management Witness has stated that he has got the records showing that the workman had worked only for 86 days, but he did not produce the said record before the Labour Court. Therefore, the Labour Court took an adverse inference and held that the termination of the workman is illegal for non-compliance of the provisions of the Act, and, accordingly, ordered for reinstatement, but in view of the circumstances, denied the back wages as well as continuity of service. Though the learned Government Pleader contended that the relief granted by the Labour Court is contrary to the material on record or to the factual position, but when once the said material is not placed before the Labour Court, the management cannot blame the Labour Court but has to blame itself for non-production of the relevant record before the Court to

prove their stand. It is not proper for the management to contend that the evidence is placed before this Court to prove their contentions. The award as passed by the Labour Court cannot be held to be illegal or irregular in the absence of any evidence placed before the Court. Therefore, the Writ Petition is devoid of merit.

7. Accordingly, the Writ Petition is dismissed. No costs.

_____

S. Ananda Reddy, J.

Dt. 01.10.2004

Kvh

1. CHAIRMAN & PRESIDING OFFICER OF THE HONOURBLE INDUSTRIAL TRIBUNAL CUM LABOUR COURT, VISAKHAPATNAM.
2. The Dy. Executive Engineer, G.E. Sub Division No.2, Hiramandalam, Srikakulam District.
3. Two CCs to the G.P. for Irrigation and Command Area Development, High Court Buildings, Hyderabad (OUT).
4. Two CD Copies.

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

-

-

-

-

-

-

-

-

W.P.No. 5048 of 1997

O R D E R

01..10..2004